

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

JBS PACKERLAND, INC., JBS S.A.,
JBS USA FOOD COMPANY, and SWIFT
BEEF COMPANY,

Petitioners,

vs.

NEBRASKA BEEF, LTD.,

Respondent.

8:23CV153

ORDER TO SHOW CAUSE

Two cases have been filed in this district seeking compliance with a subpoena duces tecum served upon nonparty Nebraska Beef, as part of the In Re Cattle and Beef Antitrust Litigation pending in the United States District Court for the District of Minnesota. In 8:22cv204, Nebraska Beef initiated the case in this district seeking to quash the subpoena. In the instant case, Petitioners JBS Packerland, Inc., JBS S.A., JBS USA Food Company and Swift Beef Company (Collectively, Petitioners) filed a motion to compel on April 18, 2023.¹ ([Filing No. 1](#)).

A hearing on the motion to quash in 8:22cv204 was held on April 19, 2023 wherein counsel for the antitrust plaintiffs and Nebraska Beef agreed to work together to resolve their discovery dispute. Case No. 8:22-cv-204 is now closed.

During the April 19, 2023 hearing, counsel for the antitrust plaintiffs and for Nebraska Beef acknowledged the motion in 8:23cv153, filed the day before, noting

¹ Prior to filing the pending motion, Counsel for Petitioners sent an email to chambers and all counsel noting that Petitioners sought to compel a response to the subpoena served as part of the Minnesota litigation, and requested the court provide guidance as to whether to file a motion to compel as part of 8:22cv204, or whether to file their request as a separate, related action.

that although Petitioners sought the same or similar information from Nebraska Beef, the solution proposed in 8:22cv204 may not be an acceptable solution for the Petitioners in this case. (8:22-cv-204 [Filing No. 69](#), audio file at 00:30:00). The court stated that the recently filed motion in this case would not be addressed during the April 19 hearing.

To date, Nebraska Beef has not responded to the motion to compel filed by Petitioners and the time for doing so has passed.² It is abundantly clear that Nebraska Beef is or should be well aware of the pending motion. The certificate of service in [Filing No. 1](#) indicates Petitioners' counsel emailed a copy of the motion to compel to "all attorneys who have entered an appearance in the related action involving Plaintiffs' subpoena to Nebraska Beef." ([Filing No. 1 at CM/ECF p. 8](#)). Pursuant to court policies, when this case was opened as a related case, the Clerk's office added Keith Dornan and Thomas J. Monaghan to the docket as counsel for Nebraska Beef, as they had personally appeared on behalf of Nebraska Beef at the hearing in 8:22cv204 and Mr. Monaghan's correspondence was included in the documents supporting Petitioners' motion. Accordingly, Dornan and Monaghan have received notice of every filing, except for [Filing No. 1](#), via the notice of electronic filing generated automatically by the CM/ECF system. Counsel for Nebraska Beef has been included in emails related to the filing of this case and acknowledged the pending motion in court on April 19, 2023. It is incumbent upon this court to keep this case moving, especially given the potential impact this outstanding discovery may have upon the progression of the underlying case pending in Minnesota.

² The documents supporting Petitioners' motion show that the subject subpoena was served upon Nebraska Beef. ([Filing No. 1-1](#)). Mr. Monaghan sent a letter on behalf of Nebraska Beef to counsel for Petitioners acknowledging receipt of the subpoena in September 2022. Petitioners do not believe the responses submitted by Nebraska Beef adequately respond to the subpoena. (See [Filing No. 1-2](#)).

Accordingly,

IT IS ORDERED: On or before June 22, 2023, Nebraska Beef shall file a response to the pending motion to compel and/or show cause why the motion to compel should not be granted as unopposed. The failure to timely comply with this order may result in Petitioners' motion being granted as unopposed without delay.

Dated this 8th day of June, 2023.

BY THE COURT:

s/ Cheryl R. Zwart
United States Magistrate Judge